

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BRIAN K. LUTHER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Case No. 11-13911

Senior United States

District Judge Arthur J. Tarnow

Magistrate Judge Mark A. Randon

**ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT & RECOMMENDATION [14],  
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [11], AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [13]**

Before the Court are Plaintiff's Motion for Summary Judgment [11] and Defendant's Motion for Summary Judgment [13]. On June 28, 2012, Magistrate Judge Randon issued a Report and Recommendation [14] recommending that the Plaintiff's motion be DENIED and that Defendant's motion be GRANTED. Plaintiff filed an Objection [15]. The Government filed a Response [16].

This Social Security case arises out of a claim for Social Security Supplemental Security Income (SSI) by Plaintiff, Brian Luther, seeking disability benefits alleging, *inter alia*, hand impairment and reflex sympathetic dystrophy. The Administrative Law Judge (ALJ) found that the claimant was not entitled to SSI benefits. The Appeals Council denied review of the ALJ's decision, and Plaintiff filed this civil action for judicial review on September 8, 2011. The parties filed motions for summary judgment.

On June 28, 2012, Magistrate Judge Randon filed a Report and Recommendation (R&R) in this matter. The R&R recommends that Plaintiff's motion for summary judgment be denied and that Defendant's motion for summary judgment be granted because the ALJ's decision was supported by substantial evidence.

Plaintiff filed an objection to the Magistrate Judge's R&R. Plaintiff objects to the Magistrate Judge's credibility determination. Because there was substantial evidence upon which the Magistrate Judge relied the Court disagrees and adopts the R&R for the reasons stated below.

## ANALYSIS

First,

[t]he scope of judicial review is limited to determining whether the findings of fact made by the Secretary are supported by substantial evidence, and deciding whether the Secretary employed the proper legal criteria in reaching those findings.

*Gaffney v. Bowen*, 825 F.2d 98, 100 (6th Cir. 1987) (citing *Gibson v. Sec'y of Health, Educ. & Welfare*, 678 F.2d 653 (6th Cir.1982)). Substantial evidence is more than a scintilla, but less than a preponderance; it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *see also Richardson v. Perales*, 402 U.S. 389, 401 (1971). This Court does not have the authority to reweigh factual evidence or decide issues of credibility. *See Arkansas v. Oklahoma*, 503 U.S. 91, 112-13 (1992); *Brainard v. Sec'y of Health and Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989) (internal citation omitted). The Court must affirm an ALJ's decision if the findings and inferences reasonably drawn from the record are supported by substantial evidence, even if the record could support a different conclusion. *See Buxton v. Halter*, 246 F.3d 762, 772 (6th Cir. 2001).

Plaintiff objects to the Magistrate Judge's consideration of his missed appointments, receipt of unemployment benefits, and conservative approach to medical treatments. While the ALJ did consider the factors mentioned by Plaintiff, there is no indication that those were the sole reasons for the Magistrate Judge's decision. The ALJ discussed specific reasons for the decision, citing objective medical evidence as well as the reasons for his credibility determination. R&R, at 4-7.

The ALJ's decision was supported by substantial evidence. This Court does not have the authority to reweigh the evidence or make credibility determinations. Therefore, the ALJ's decision is affirmed.

## **CONCLUSION**

Based on the foregoing analysis, the Court hereby ADOPTS the Report and Recommendation [14] as the findings and conclusions of the Court. Therefore,

IT IS ORDERED that Plaintiff's Objection [15] is OVERRULED and Plaintiff's Motion for Summary Judgment [11] is DENIED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [13] is GRANTED.

SO ORDERED.

s/Arthur J. Tarnow  
ARTHUR J. TARNOW  
SENIOR U.S. DISTRICT JUDGE

Dated: August 28, 2012

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## **CERTIFICATE OF SERVICE**

I hereby certify on August 28, 2012 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on August 28, 2012: **None.**

s/Michael E. Lang  
Deputy Clerk to  
District Judge Arthur J. Tarnow  
(313) 234-5182